THE HON'BLE SRI JUSTICE N.V. RAMANA

Writ Petition No. 22108 of 2006

Dated: 26.10.2006

Between:

M.A. Ghanim, S/o Abdul Hameed, aged about 40 years, Driver, Nagarkurnool, Mahaboobnagar District.

.... PETITIONER

AND

The Depot Manager, APSRTC, Nagar Kurnool, Mahaboobnagar District.

.....RESPONDENT

THE HON'BLE SRI JUSTICE N.V. RAMANA

Writ Petition No. 22108 of 2006

Order:

1. This writ petition is filed seeking a Mandamus declaring the action of the respondent in issuing the proceedings dated 27.04.1995, withholding the annual increment of the petitioner for a period of six months with cumulative effect, as illegal and arbitrary.

2. The petitioner is employed as a Driver in APSRTC. He was issued a charge sheet, dated 03.10.1992, alleging that he deserted his duties on 28.09.1992, and that he was required to submit the explanation, as to why necessary disciplinary action shall not be taken against him, for which he submitted explanation denying the charges framed against him. The respondent, without conducting any regular departmental enquiry and without affording any opportunity, passed the impugned order imposing punishment of withholding the annual increment for a period of six months with cumulative effect. Aggrieved by the same, the petitioner filed the present writ petition.

3. Learned counsel for the petitioner contends that stoppage of increments of an employee with cumulative effect is a major penalty, and the same cannot be imposed without conducting regular departmental enquiry as contemplated under the APSRTC Employees' (CC&A) Regulations (for short 'the Regulations'). In support of his contention, learned counsel relied on the judgment of the Supreme Court in "***Kulwanth Singh Gill v. State of Punjab***[1]".

4. On the other hand, learned Standing Counsel appearing on behalf of the respondent-Corporation vehemently opposed the said

contention and submitted that the respondent, after careful consideration of the entire evidence available on record together with the explanation submitted by the petitioner, has passed the impugned order, hence, no reasons to interfere with the same.

5. Heard the learned counsel for both the parties and perused the material available on record.

6. It is an admitted fact that the respondent imposed punishment of deferment of annual increment for a period of six months with cumulative effect, which is a major punishment. Admittedly, no regular departmental enquiry was conducted though the charge sheet was issued to the petitioner before imposing the penalty. The apex Court in "***Kulwanth Singh Gill's Case*** (1 supra) held that stoppage of increments with cumulative effect is a major penalty and it cannot be imposed without conducting the departmental enquiry. Since the punishment of stoppage of annual increment for a period of six months was imposed without conducting regular departmental enquiry violating the judgment of the apex Court, the impugned order cannot be sustained.

7. In the ordinary course of things, the impugned order needs to be set aside leaving it open to the respondent to pass fresh orders, but to avoid further litigation in the matter, I deem it appropriate to dispose of the writ petition with the following direction.

8. The impugned order dated 27.04.1995, passed by the respondent, imposing punishment of stoppage of annual increment for a period of six months with cumulative effect, is modified to that of stoppage of annual increment without cumulative effect. The petitioner shall not be entitled to any monetary benefits arising out of this order, but shall be entitled to fixation of pay only.

9. Accordingly, the writ petition is disposed of. No costs.

N.V. RAMANA, J.

Date: 26.10.2006
Nsr/Sj

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1 1991 Supp (1) SCC 504